

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 LAURELWOOD INDUSTRIES
11 INCORPORATED, doing business as
12 Automation GT, a California
13 corporation,

14 Plaintiff,

15 v.

16 PETER GOTTSCHLICH, and
17 individual; AUTOMATION GT, a
18 California corporation; and DOES 1
19 through 30, inclusive,

20 Defendants.

Civil No. 15cv1256 JAH (RBB)

**ORDER DENYING DEFENDANT'S
REQUEST FOR APPOINTMENT
OF COUNSEL [Doc. # 10]**

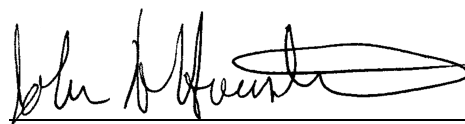
21 Pending before this Court is Defendant Gottschlich's Motion for Appointment of
22 Counsel. Doc. # 10. On August 26, 2015, Defendant Gottschlich requested the
23 appointment of counsel pursuant to 42 U.S.C. § 2000e 5(f)(1) to assist him in defending
24 this civil action. See Doc. # 10 at 1. Defendant asserts that the court should appoint an
25 attorney to represent him in this matter because (1) this action against Defendant
26 "requires proper legal advice"; (2) Defendant is currently unemployed and almost out of
27 money; and (3) Defendant needs to keep the money he has to avoid bankruptcy. Id. at
28 2. Defendant attempted to obtain one attorney and made no further efforts. Id. at 3. For
the reasons set forth below, the Court **DENIES WITHOUT PREJUDICE** Defendant's
motion for appointment of counsel.

1 There is no constitutional right to be represented by counsel in a civil action.
 2 Hedges v. Resolution Trust Corp., 32 F.3d 1360, 1363 (9th Cir. 1994); See Hernandez
 3 v. Whiting, 881 F.2d 768, 770-71 (9th Cir. 1989). Under 28 U.S.C. § 1915(e)(1),
 4 however, district courts may appoint counsel for indigent litigants under “exceptional
 5 circumstances.” See Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991) (quoting
 6 Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)). Determining whether
 7 “exceptional circumstances” exist requires a court to evaluate (1) the likelihood of success
 8 on the merits, and (2) the ability of the petitioner to articulate his claims pro se in light
 9 of the complexity of the issues. Id. “Neither of these issues is dispositive and both must
 10 be viewed together before reaching a decision.” Id.

11 Here, Defendant’s indigence and corresponding inability to pay for counsel has not
 12 been established. See Doc. # 10 at 2. However, the Court does not need to address the
 13 indigence prong as Defendant’s motion clearly failed to meet other requirements.
 14 Defendant did not make a “reasonably diligent effort” to obtain counsel. See Bailey v.
 15 Lawford, 835 F. Supp. 550, 552 (S.D. Cal. 1993). Defendant only contacted one
 16 attorney, who merely told the Defendant that the claims were not suited to be defended
 17 in federal court. Doc. # 10 at 3. Moreover, Defendant failed to state grounds that would
 18 allow this Court to determine whether exceptional circumstances exist. Defendant failed
 19 to argue why he would succeed on the merits, after a Default was entered against him due
 20 to his failure to defend the initial complaint. Doc. # 8. Defendant also failed to
 21 articulate his claims beyond saying the civil action against him “requires proper legal
 22 advice.” See Docs. # 8, 10. Defendant’s statement neither expresses Defendant’s
 23 likelihood of success on the merits nor articulates the complexity of the issues involved.

24 Accordingly, IT IS HEREBY ORDERED that Defendant Gottschlich’s request for
 25 appointment of counsel is DENIED without prejudice.

26 Dated: October 23, 2015



JOHN A. HOUSTON
United States District Judge